Marquette Law Review

Volume 14
Issue 3 *April 1930*

Article 9

Inheritance Tax: Non-Resident Decedent: Bonds

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constructive; that mere failure of the infant to disclose his age is not sufficient. This, quite apparently for the reason that the infant himself may be unaware of the legal consequences of his acts, and that it is his affirmative wrongdoing which leads to liability.

In the instant case the plaintiff paid the money involved in this case in reliance upon the defendant's misrepresentations as to his contractual capacity. He is not held liable on the contract, but for damages in deceit; therefore the question of benefit does not arise as in cases where he is held liable by way of estoppel. Being liable in deceit for the damages sustained by the plaintiff on account of the deceit, the defendant may not escape this liability by disaffirmance or repudiation. The defendant not being liable upon the contract, he is not liable either for the attorney's fees or for interest above the legal rate.

JOHN S. BROSEMER

Inheritance Tax: Non-Resident Decedent: Bonds.

The Supreme Court of the United States in an opinion dated January 6, 1930, decides that a state cannot assess an inheritance tax on a transfer of personalty in the form of securities issued by the state so attempting to tax, where the said securities are owned by a non-resident decedent and kept within the state of his domicile. The case is that of the *"Farmers Loan and Trust Co.* v. *State of Minnesota,"* 50 Sup. Ct. 98; 74 L. Ed. 190.

The facts were as follows: One Taylor while domiciled and residing in New York died intestate leaving as part of his estate negotiable bonds and certificates of indebtedness issued by the state of Minnesota and the cities of Minneapolis and St. Paul. These certificates passed under his will and were taxed in New York. Minnesota assessed a tax upon the same transfer which was approved by her Supreme Court (176 Minn. 634; 222 N.W. 528) and from this decision the executor of Taylor's estate appealed.

The appellant, executor, contended that such taxation by the state of Minnesota conflicts with Section 1 of the 14th Amendment of the Federal Constitution.

Counsel for the state of Minnesota contended that the obligations were debts of that state and her corporations, (Minneapolis and St. Paul), and that her laws gave them validity, protected them, and provided means for enforcing payment. On this theory Minnesota claimed *situs* for taxation purposes.

Under the rule of *Blodgett* v. *Silberman* (277 U.S. 1; 48 S. Ct. 410), these certificates of indebtedness are to be considered as any other choses in action in regard to the taxation of which there are four different views, i.e.:

1. They may be taxed at the domicile of the owner;
2. At the debtor's domicile;
3. At the place where the instruments are found;
4. At the place where the owner has caused them to become integral parts of a localized business.

It is pointed out by Justice McReynolds, who wrote the opinion, that the same bonds may be declared to be present in four different jurisdictions for taxation purposes, a situation which he declares to be absolutely wrong. In conforming with such a view the court expressly over-rules *Blackstone* v. *Miller,* 188 U.S. 189, which held that choses in action were taxable both at the debtor's domicile and at the domicile of the creditor. The opinion condemns the existence of such a theory of taxation because it tends to "disturb good relations among the states and to produce the kind of discontent expected to subside after the establishment of the Union." The court mentions with approval the policy adopted by about two-thirds of the states of establishing reciprocal exemption laws in situations like this, to avoid double taxation. The general rule is that no state may tax anything not within its jurisdiction without violating the 14th Amendment, nor can a state tax the testamentary transfer of property wholly beyond her power, nor impose death duties reckoned upon the value of tangibles permanently located outside her limits. *Frick* v. *Pennsylvania,* 268 U.S. 473. The decision points out that tangibles may be taxed only in the state *where found,* and declares that this rule should be extended to include intangibles (shares of stock and bonds, etc.), because much of the wealth of the country is found in the latter form. "Taxation is an intensely practical matter," says the court, "and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences."

In conclusion, the court adopts the rule "that in general, intangibles may be properly taxed at the domicile of their owner, and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota. "The bonds and certificates of decedent had acquired permanent situs for taxation in New York; the testamentary transfer was properly taxable there, but not in Minnesota." Reversed.

Mr. Justice Stone wrote a concurring opinion in which he suggested that this case was not an attempt to tax a debt, but rather the transfer of a debt and that the court should leave the decision of the correctness of double taxation to be decided as each case presents itself and should not lay down any positive prohibition against this form of double taxation.

Justice Holmes wrote a dissenting opinion in which Justice Brandeis concurred.

THOMAS W. HAYDEN

Landlord and Tenant: Surrender: Mitigation of damages.

In *Weinsklar Realty Co.* v. *Dooley et al,* 228 N.W. 515 (Wis.); our Supreme Court has, at last, outlined the two alternatives open to a landlord upon abandonment of premises by a lessee.

In this case the plaintiff lessor had entered into an executed lease for a term of five years from December 1, 1926, with the defendant lessee. Clarke, one of the defendants, was the guarantor for the lessees. Until July 1, 1927, the lessees conducted a drugstore on the premises. On this date they organized a corporation to which the lessees assigned all of their rights under the lease. Although there was a provision in the lease which specified that that lease was not to be assigned without the consent of the lessor, the lessor accepted rent under the lease from the assignee corporation. The action against Clarke was predicated upon his guaranty. On the 28th of July, 1928, the assignee corporation made an assignment for the benefit of creditors, a trustee was appointed, the stock removed, and the key turned over to the plaintiff lessor. The rent for July was not paid. The plaintiff accepted the key and entered the house and put up "For Rent" signs. By September, 1928, he had succeeded in reletting the premises, and at this time brought this action to recover the rent for July and August.

The court held that there had been no proof which could be construed as evidence of the plaintiff's intention to accept a surrender of the premises, and that those liable under the lease were not relieved. In arriving at this conclusion the court very helpfully construed *Lincoln Fireproof Warehouse Co.* v. *Greusel,* 227 N.W. 6, (Wis.); in which in turn, the court had made an unsuccessful attempt to construe *Selts Investment Co.* v. *Promoters,* 197 Wis. 476, 485; 222 N.W. 812, and *Strauss* v. *Turck,* 197 Wis. 586; 222 N.W. 811. This helpful, because definite, construction was given as follows: the landlord can either enter and take possession for the purpose of mitigating damages with the intention of relying on the liability of the lessees, in which case he must evidence his intention to do only this and not seem to accept a surrender of the premises, releasing the lessees, or: he can accept a surrender and thereby release the parties liable under the lease. The